

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PHILIP D. PICKARD,

Plaintiff,

v.

No. CIV 99-758 LCS

**UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE,**

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

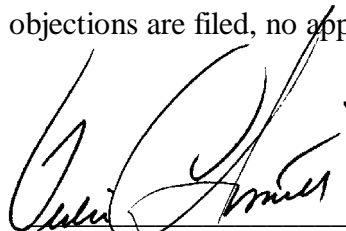
THIS MATTER is before the Court on Defendants' Motion to Dismiss (*Doc. 2*), filed September 28, 1999. No response to the Motion to Dismiss appears on the docket. For the reasons stated, I propose finding that Defendants' motion is well-taken, and recommend that this action be dismissed without prejudice.

Local Rule D.N.M. LR-Civ. 7.4 requires that in cases where any party appears *pro se*, a response brief must be filed and served on all parties in conformance with the deadlines of D.N.M. LR-Civ. 7.6. Local Rule D.N.M. LR-Civ. 7.6(a) provides that a response is due fourteen calendar days after service of the motion. Thus, I propose finding that Plaintiff has failed to file a timely response to the Motion. Further, Local Rule 7.5(b) provides that failure to serve or file a response constitutes consent to grant the motion. Therefore, I propose finding that Plaintiff is deemed to have consented to dismissal of this action.

Defendant's motion is also well-taken on its merits. Plaintiff seeks damages and injunctive relief against the Internal Revenue Service based on Defendants' actions in seeking to collect penalties and interest on an alleged tax debt. This Court is without jurisdiction to entertain actions against the United States unless the Government has consented to suit. *See United States v. Murdock Mach. & Eng'g Co.*, 81 F.3d 922, 930 (10th Cir. 1996). Plaintiff fails to identify any waiver of sovereign immunity that might apply to this action. Further, to the extent that this action seeks injunctive relief to restrain the collection of a tax, the Tax Anti-Injunction Act precludes this Court from exercising jurisdiction. *See* 26 U.S.C. § 7421(a). Therefore, I propose finding that there is no subject matter jurisdiction to entertain Plaintiff's complaint.

Recommended Disposition

I recommend that Defendants' Motion to Dismiss (*Doc. 2*), filed September 28, 1999, be **granted** and this action be **dismissed without prejudice**. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.



Leslie C. Smith

United States Magistrate Judge